Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Biennial Regulatory Review of	)	**WC Docket No. 02-313**
Regulations Administered by the	)	
Wireline Competition Bureau	)	
	)	

To: The Commission

COMMENTS OF MCI

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Pursuant to Section 1.415 of the Rules of the Federal Communications Commission, MCI respectfully submits these Comments in response to the Notice of Proposed Rulemaking released January 12, 2004 in the above-captioned matter.[1]

I. SUMMARY AND INTRODUCTION

In the NPRM, the Commission seeks comment on, among other things, several aspects of its interconnection rules as set forth in Part 51 of Title 47 of the Code of Federal Regulations.[2] MCI limits its comments to one subset of Part 51: the rules addressing notice of network changes, set forth in Commission Rule Sections 51.325 – 51.335.

MCI provides DSL service to residential and business customers utilizing copper loops served by over 800 central offices in over 30 markets. The Commission decided in the Triennial

[1] Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau, WC Docket No. 02-313, *Notice of Proposed Rulemaking*, 19 FCC Rcd 764 (2004) *("NPRM")*.

[2] *Id.* at ¶¶ 16-21.

Review Order to allow incumbent local exchange carriers ("ILECs") to retire copper loops when they deploy fiber loops, such as FTTH or hybrid loops.[3] The Commission also decided in the Triennial Review Order not to allow MCI and other competitive local exchange carriers ("CLECs") to deliver DSL service over fiber loops.[4] Thus, MCI will be limited in its ability to provide DSL service without access to copper loops. Although the Commission's rules enable CLECs to file oppositions seeking to delay ILEC retirement of copper loops, they appear to be prohibited from preventing the retirement of loops.[5] As discussed herein, the Commission's network change notification rules need to be significantly modified to adequately preserve CLECs' ability to access copper loops and, thus, facilitate broadband competition.

In the NPRM, the Commission asks whether it should modify Section 51.329(c)(1) to require ILECs to "add[] specific titles to identify notices of replacement of copper loops or copper subloops with FTTH."[6] MCI strongly supports such a change. CLECs are deluged with various types of information concerning ILECs' networks and they need an efficient and reliable way of spotlighting highly important notices of copper loop retirement, especially in instances where the CLEC is using the copper being retired.[7] Due to the importance of any decisions to remove copper loops used by CLECs, the Commission should go beyond its proposal in the

[3] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 16978, 17141, ¶ 271 (2003) *("TRO").*

[4] *TRO* at 17103-04, ¶ 200.

[5] 47 C.F.R. § 51.333(c) (2002).

[6] *NPRM* at ¶ 20.

[7] Unless otherwise clearly indicated by express language or the context of the reference, any reference in these comments to "copper loops" in the context of copper retirement should be read to also include copper subloops.

NPRM and require ILECs to add specific titles to notifications of *all* plans to retire copper loops, whether it is replacing them with FTTH or a hybrid loop such as fiber-to-the-curb.

The Commission should also make the following additional modifications and clarification to its network change notification rules in order to facilitate the continuance of broadband competition:

- **Enable CLECs to oppose the retirement of copper loops.** The Commission's rules currently appear to permit CLECs to only seek extensions of the implementation dates of network changes. However, because the retirement of copper loops could force CLECs to terminate DSL service, they should be able to petition to prevent such retirement. If a CLEC loses its ability to provide DSL, it should receive appropriate compensation from the ILEC for its stranded network investment.

- **Require ILECs to send tailored notifications directly to potentially impacted CLECs for both short-term and long-term notifications of copper retirement.** For network changes involving copper retirement, CLECs that may be impacted need notifications that will enable them to efficiently assess the situation and take appropriate action. Accordingly, the Commission should require ILECs to send each CLEC leasing loops in that area an individualized notification containing, in addition to the information already required by Section 51.327, a listing of the CLEC's specific circuits (by circuit ID) that will be affected by the change.

- **Extend the time period for filing objections to the retirement of copper loops to 30 days and require ILECs to provide at least 90 days' public notice for all copper retirements.** CLECs are required to file objections to notices of retirement of copper loops within 9 days following release of the Commission's public notice. Given that carriers could be forced to terminate their DSL offerings on the affected copper loops, they should be provided 30 days to file objections. The Commission should also require ILECs to provide a minimum of 90 days' public notice prior to retirement of all copper loops, regardless of whether they are being replaced with FTTH or hybrid loops.

- **Clarify that ILECs are required to provide public notice of all FTTH and hybrid loop fiber deployments.** In order for CLECs to make informed facilities investment decisions, they need advance notice of ILECs' plans to deploy fiber even if those deployments are not planned in conjunction with copper retirement. Otherwise, a CLEC could unknowingly invest in facilities that would be incompatible with the ILEC's planned fiber deployment.

II. DISCUSSION

A. The Commission Should Require The Use Of Specific Titles To Identify Public Notices Of Retirement Of Copper Loops

Section 51.329(c)(1) sets forth the specific titles that ILECs must use when providing public notice, or certification of public notice, of network changes.[8] In the NPRM, the Commission seeks comment on whether it should modify Section 51.329(c)(1) to require ILECs to add "specific titles to identify notices of replacement of copper loops or copper subloops with FTTH loops."[9] MCI strongly supports such a change. Such a modification would clarify the requirements of Section 51.329(c)(1) and, more importantly, distinguish the critically important notices of retirement of copper loops from the masses of less important network notifications that ILECs provide to CLECs every week.

CLEC personnel charged with the responsibility of keeping track of the status of parts of the ILEC networks that they are leasing are deluged with various types of ILEC notifications. Although being provided with huge amounts of information on matters large and small is often informative and useful, the receipt of massive numbers of notices can inevitably lead to the most critical notifications – such as those regarding copper retirements – being inadvertently overlooked or not reviewed in a timely manner. The current situation is akin to receiving hundreds of e-mails without distinguishing subject headers all at once. With no way of distinguishing between all the unopened e-mails, the recipient can simply become overwhelmed.

[8] Unless otherwise clearly indicated by express language or the context of the reference, any reference in these comments to "public notice" provided by ILECs should be read to also include certifications of public notice provided by ILECs.

[9] *NPRM* at ¶ 20.

Requiring ILECs to add specific titles to public notices concerning copper retirement would easily resolve the foregoing problem at virtually no cost to ILECs. Those notices would then be spotlighted for CLEC personnel, who could review and address them in a timely manner. The Triennial Review Order promulgated specific rules designed to distinguish such decisions from more routine network change notifications and to provide CLECs with heightened protection from the decisions' potentially adverse effects.[10] While requiring specific titles for public notices of copper retirement would not go nearly far enough toward bringing equitable treatment to CLECs (*see* MCI's additional modification requests below), it would provide significant benefit.

The FCC should not limit specific titling of notifications to situations where FTTH is being deployed. Rather, this rule should apply anytime copper is being replaced with fiber. It does not matter whether an ILEC is replacing copper loops with FTTH or with a hybrid loop such as fiber-to-the-curb ("FTTC"). The net effect is the same: the ILEC is retiring copper that interconnecting carriers use to provide voice and DSL services. CLECs will have to switch to a new means of providing voice transmission (possibly over a 64 kb channel on the newly deployed fiber) and they may be forced to terminate their DSL offering (because the Commission's rules do not currently provide for any alternative DSL transmission paths when copper is retired). Surely, a CLEC that stands to lose use of a copper loop desires specific notification of that fact regardless of whether the ILEC is replacing the copper with FTTH or a hybrid loop. Thus, the Commission should modify Section 51.329(c)(1) to require the use of specific titles to identify *all* public notices of retirement of copper loops.

[10] *TRO* at 17146-47, ¶¶ 281-283; *see* 47 C.F.R. §§ 51.325(a)(4), 51.331(c), 51.333(b)(ii), 51.333(f) (2002).

B. The Commission Should Enable CLECs To Oppose The Retirement Of Copper Loops

The Commission's network change notification rules permit CLECs to file oppositions to ILECs' long-term and short-term notices to replace copper loops with FTTH.[11] They also allow CLECs to file oppositions to ILECs' short-term notices to retire copper generally.[12] In either case, the rules appear to limit CLEC oppositions to requests to extend ILECs' loop retirement dates; they do not permit CLECs to seek to block the loop retirements entirely.[13]

The Commission's regulatory scheme suffers from three major flaws. First, CLECs appear to be prohibited from seeking to prevent the retirement of copper loops, even though such retirement would substantially harm CLECs by forcing them to terminate DSL services offered over the affected loops. Second, the replacement of copper loops with FTTH is treated differently than replacement of copper loops with hybrid loops, even though the copper is being retired and removed from CLECs' use under either scenario. Third, the rules do not require ILECs to compensate CLECs for any expenses, loss of investment, or other actual damages if the copper retirement forces them to cease providing DSL services.

1. CLECs Should Be Permitted To File Oppositions Seeking To Prevent The Retirement Of Copper Loops

Under the FCC's existing rules, CLECs appear to be prohibited from seeking to prevent the retirement of copper loops, even though such retirement would significantly harm a CLEC's ability to provide service to existing customers. The current network change notification rules apparently provide that a CLEC faced with having to cease providing DSL service to customers

[11] 47 C.F.R. §§ 51.331(c) and 51.333(c).

[12] 47 C.F.R. § 51.333(c).

[13] *See* 47 C.F.R. § 51.333 (c)(1)-(3).

served by copper slated to be retired can only petition for an extension of the retirement date. Short of the ILEC's voluntary cooperation in negotiating a new transmission path, the CLEC can only delay elimination of its DSL product to consumers and businesses.

In the Triennial Review Order, the Commission described its network change notification rules as "adequate safeguards" for preventing hardships that loop retirement may cause, maintaining that they "will ensure that incumbent and competitive carriers can work together to ensure the competitive LECs maintain access to loop facilities."[14] Those sentiments are overly optimistic and divorced from reality. It is hard to understand how rules that allow an ILEC to threaten the existence of a CLEC's DSL product while providing the CLEC with no meaningful opportunity to defend itself can be considered "adequate safeguards."

The Commission can remedy this regulatory inequity by enabling CLECs to petition to prevent the retirement of copper loops being used by CLECs to provide broadband services. Such a rule change would not constitute a prohibition on retiring copper loops or enable CLECs to block retirement at will. Rather, a CLEC would be required to present a meritorious case for preventing retirement and the Commission would weigh its position against that of the involved ILEC. Although this would involve only an incremental change in the current rules, it would produce a far more equitable regulatory scheme. Also, by granting CLECs a real voice in the copper retirement process, ILECs may have an incentive to work toward amicable commercial agreements for facilities used for broadband services. Additionally, broadband competition would be preserved and consumers would not be impacted.

2. The Commission's Copper Replacement Rules Should Not Differentiate Between FTTH And Hybrid Loops

[14] *TRO* at 17146-47, ¶ 281.

The Commission should revise its rules so that retirement of copper loops is treated the same for deployment of FTTH and hybrid loops. Under the current regulatory scheme, CLECs are permitted to seek extensions of long-term notices of replacement of copper with FTTH and of all short-term notices involving copper retirement.[15] However, they are not permitted to seek extensions of long-term notices of replacement of copper with hybrid loops.[16]

As explained in the preceding section, there is no rational basis for differentiating retirement of copper on the basis of the fiber configuration chosen to replace it. CLECs providing DSL over the copper to be retired will likely lose their ability to provide that service regardless of whether the ILEC replaces the copper with FTTH or a hybrid loop, and regardless of whether the ILEC provides short or long-term notice. Therefore, the Commission should modify the network change notification rules to enable CLECs to file oppositions to *all* short and long-term notices involving copper retirement.

3. ILECs Should Be Required To Compensate CLECs For Lost Investment When CLECs Are Forced To Eliminate DSL Services As A Result Of ILEC Copper Retirement

The network change notification rules do not contain provisions for compensating CLECs that are forced to eliminate DSL services due to copper retirement by ILECs. CLECs have invested and continue to invest considerable sums in equipment, labor, and non-recurring fees to provide DSL over ILECs' copper loops. On average, MCI has invested over $100,000 in each central office from which it provides DSL. Costs include: (1) labor for installing, maintaining, and updating the equipment; (2) non-recurring fees paid to ILECs for installing equipment and adding customers; (3) other expenses involved in gaining customers; (4)

[15] 47 C.F.R. §§ 51.331(c) and 51.333(c).

[16] 47 C.F.R. § 51.331.

collocation space rental; and (5) cabling. Also, when a CLEC is forced to cease providing DSL, it incurs labor costs for decommissioning its equipment and closing its customer accounts.

If an ILEC's decision to retire copper results in a CLEC having to eliminate its DSL service, equity demands that the ILEC compensate the CLEC for its damages. Thus, the Commission should modify its network change notification rules to require ILECs to compensate CLECs for lost investment when copper retirement results in the forced cessation of DSL service to end-users.

C. The Commission Should Require ILECs To Send Tailored Notifications Directly To Potentially Impacted CLECs For Both Short-Term And Long-Term Notifications Of Copper Retirement

The Commission's network change notification regulations require ILECs to provide notification directly to CLECs only for short-term notices, and even then, ILECs are not required to provide tailored information in each notice.[17] However, CLECs need to be made aware of network changes involving copper retirement immediately so they can take the appropriate steps as soon as possible, regardless of whether the change is set to occur in the short-term or long-term. Also, CLECs need individualized information regarding the change to enable them to efficiently and effectively determine its impact on their particular systems. Accordingly, in addition to the short-term notice service requirements, the Commission should require ILECs to send notifications of network changes concerning copper retirement directly to potentially impacted CLECs for long-term notifications. Also, for both short-term and long-term notifications concerning copper retirement, the Commission should require ILECs to

[17] 47 C.F.R. §§ 51.327, 51.333.

individualize each CLEC's notification to contain a listing of the CLEC's specific circuits (by circuit ID) that will be affected by the change.[18]

With regard to requiring ILECs to send notification to each CLEC, the Commission already requires individual service 5 days in advance of filing with the Commission for short-term notifications.[19] One of the reasons for that requirement is to ensure that directly impacted CLECs have immediate knowledge of the notification, because they have just 9 business days following the release of the Commission's public notice to file oppositions.[20] However, if an ILEC files a *long-term* notice of replacement of copper with FTTH (to which oppositions must also be filed within 9 business days following the release of the Commission's public notice), the ILEC does *not* have to directly serve CLECs.[21] Requiring ILECs to directly send notice to CLECs for long-term notifications as well as short-term notifications would help resolve this nonsensical disparity.

The notices need to be tailored to contain a listing of each CLEC's affected circuits (by circuit ID) because for many areas of the country, carriers have numerous circuits that may or may not be affected by any given change in the ILEC's network. The current information being provided does not permit CLECs to determine which circuits will be retired. ILECs have the

[18] This information should be provided in addition to the information already required by 47 C.F.R. § 51.327.

[19] 47 C.F.R. § 51.333.

[20] As discussed in the following section, 9 days is an unreasonably short period of time in which to require CLECs to file objections. CLECs should be provided 30 days in which to file objections.

[21] 47 C.F.R. §§ 51.331(c). *See also TRO* at 17147, ¶ 283 (2003) ("[W]e establish a right for parties to object to the incumbent LEC's proposed retirement of its copper loops for both short-term and long-term notifications as outlined in Part 51 of the Commission's rules.")

circuit IDs for the individual CLEC circuits that would be affected readily available. Thus, it would be a simple and inexpensive matter for them to add such information to individual notices.

D. The Commission Should Extend The Time Period For Filing Objections To The Retirement Of Copper Loops To 30 Days And Require ILECs To Provide At Least 90 Days' Public Notice For All Copper Retirements

Pursuant to the network change notification rules, CLECs are required to file objections to notices of retirement of copper loops within 9 business days following release of the Commission's public notice.[22] Given the extreme consequences to CLECs of copper retirement, a mere 9 business days is an unreasonably short period of time in which to prepare and file objections. It would be an especially insufficient period of time if a CLEC were facing multiple copper retirement notifications simultaneously. Moreover, the Commission's rules currently allow ILECs to replace copper loops with hybrid loops with as little as 10 business days public notice (unlike replacement with FTTH, which requires 90 days' public notice). The Commission should modify the network change notification rules to: (1) provide CLECs with 30 days to file objections and (2) require ILECs to provide a minimum of 90 days' notice prior to retirement of copper loops, regardless of whether they are being replaced by FTTH or hybrid loops.

The Commission's requirement that CLECs file objections within 9 business days appears to be based on the corresponding network change rule that provides that short term notices of network changes will generally be deemed final on the 10th business day after release of the Commission's public notice, unless an objection is received.[23] In the copper retirement context, however, that short public notice period is applicable only to replacement of copper with

[22] 47 C.F.R. §§ 51.331(c) and 51.333(c).

[23] *See* 47 C.F.R. § 51.333(b)(i).

hybrid loops.[24] For replacement of copper with FTTH, changes are not deemed final until the 90th day after release of the Commission's public notice.[25] Certainly for replacement of copper with FTTH, with its longer notice period, there is no reason to require CLECs to rush out objections in just 9 business days. Allowing CLECs 30 days to file objections and providing ILECs an appropriate amount of time to file replies would still be well within the 90 day notice period and, thus, provide the Commission with ample time to rule on objections.

The rule permitting notices of replacement of copper with hybrid loops to become final after just 10 business days must also be modified. Deeming notice of copper retirement final after just 10 business days is clearly unreasonable, as CLECs facing loss of their ability to provide DSL service due to copper retirement plainly need more than 10 business days to prepare. Although CLECs can petition to have the period extended, there is no guarantee their petitions will be granted.[26] Moreover, retiring copper just 10 business days after notice and thus forcing to a CLEC to cancel its DSL service to customers after just 10 business days could cause the CLEC to unavoidably run afoul of Section 63.71(c), which requires CLECs to provide at least 30 days notice to customers before discontinuing service.[27]

There is no rational basis for dramatically different public notice periods for copper being replaced with FTTH and copper being replaced with hybrid loops. The effect on CLECs – loss of the ability to provide DSL – is the same. Thus, the Commission should harmonize its copper retirement rules and provide that, pending objections, all notices of replacement of copper loops

[24] *See* 47 C.F.R. § 51.333(b)(i) and (ii).

[25] 47 C.F.R. § 51.333(b)(ii).

[26] 47 C.F.R. § 51.333(c)-(f).

[27] 47 C.F.R. § 63.71(c) (2002).

will be deemed final in no earlier than 90 days. Commensurately, the Commission should increase the period allowed for filing oppositions to all forms of copper retirement to 30 days.

E. The Commission Should Clarify That The Network Change Notification Rules Require ILECs To Provide Public Notice Of All FTTH And Hybrid Loop Fiber Deployments

ILECs should provide public notice of all FTTH and hybrid loop fiber deployments to fully comport with the network change notification rules. However, the rules can conceivably be read as not definitively requiring ILECs to provide notice of fiber deployments that are not planned in conjunction with copper retirement.[28] Due to the importance of keeping CLECs apprised of ILEC network plans that could affect CLECs' own investment decisions, the Commission should clarify that the network change notification regulations require ILECs to provide public notice of all FTTH and hybrid loop fiber deployments, even if they are not planned in conjunction with copper retirement.

CLECs that have invested in facilities collocated in ILEC central offices have spent considerable capital and effort maintaining, updating, improving, expanding, and generally investing in their broadband networks. Likewise, CLECs planning to expand their networks in the near future spend substantial capital and effort planning, evaluating and/or purchasing equipment, and otherwise ramping up for the deployment of their networks. Because CLECs' rely on access to the local loop facility, when making investment decisions they have no choice but to be mindful of ILECs' medium and long-term network plans. For example, a CLEC would not want to invest in adding cabling to expand its DSL offering in a particular central office if the ILEC plans to deploy fiber in that office and retire any existing copper.

[28] 47 C.F.R. § 51.325(a).

Section 251(c)(5) of the Telecommunications Act of 1996, the basis of the network change notification regulations, provides that ILECs are required to provide "reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as any other changes that would affect the interoperability of those facilities and networks."[29] Commensurately, the network change notification regulations implementing Section 251(c)(5) specifically require ILECs to provide public notice of changes that, among other things, "[w]ill affect a competing service provider's performance or ability to provide service" and "[w]ill affect the incumbent LEC's interoperability with other service providers."[30]

The broad language of Section 251(c)(5) plainly requires ILECs to provide public notice of fiber deployment even when it is not planned in conjunction with copper retirement. Given that CLECs need to know how ILECs intend to build out their networks in order to make timely and prudent investment decisions, information on fiber deployments not tied to copper retirement clearly falls within Section 251(c)(5)'s reference to "information necessary for the transmission and routing of services."[31] Such information also falls within Section 251(c)(5)'s reference to notice of "any other changes that would affect the interoperability of [ILECs'] facilities and networks."[32] An ILEC's interoperability depends upon the use of compatible technology, and the transmission medium deployed by the ILEC is a fundamental aspect of the ILEC's

[29] 47 U.S.C. § 251(c)(5) (2000).

[30] 47 C.F.R.§ 51.325(a)(1) and (2).

[31] *See* 47 U.S.C. § 251(c)(5).

[32] *See* 47 U.S.C. § 251(c)(5).

technology platform. The deployment of fiber may render that portion of the ILEC's network non-interoperable (at least for the provision of certain services, such as DSL).

Additionally, pursuant to the express language of Section 251(c)(5)'s implementing regulations, knowing whether an ILEC plans to deploy fiber in an area clearly "affect[s] a competing service provider's performance or ability to provide service," because CLECs need such information to make informed investment decisions.[33] Also pursuant to the express language of the regulations, fiber deployment, regardless of whether it is associated with copper retirement, "[w]ill affect the incumbent LEC's interoperability with other service providers."[34]

In accordance with the foregoing, the Commission should clarify that the network change notification regulations require ILECs to provide public notice of all FTTH and hybrid loop fiber deployments, even if they are not planned in conjunction with copper retirement.

III. CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, MCI respectfully asks the Commission to act in the public interest in accordance with the proposals set forth herein.

Respectfully submitted,

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[33] *See* 47 C.F.R.§ 51.325(a)(1).

[34] *See* 47 C.F.R.§ 51.325(a)(2).

CERTIFICATE OF SERVICE

I, Michelle Lopez, hereby certify that on this 19th day of April, 2004, copies of the foregoing were served by regular mail or electronic mail on the following:

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